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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re WALTER S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. WALTER S., Defendant and Appellant	F039638 (Super. Ct. No. 01CEJ600102-001) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Donald S. Black, Judge.

Jeffrey S. Kross, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Senior Assistant Attorney General, Stephen G. Herndon and James Ching, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Ardaiz, P.J., Vartabedian, J. and Cornell, J.

On August 8, 2001, the district attorney filed a petition in Fresno County Juvenile Court alleging that appellant Walter S. was a minor within the meaning of Welfare and Institutions Code section 602 by reason of his commission of an assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),[1] burglary (§ 459), and possession of a firearm by a minor (§ 12021, subd. (a)(1)). On August 9, 2001, the court found good cause to detain appellant within the custody of the court. At the time of the alleged commission of these crimes, appellant was on probation in the custody of his mother for attempt to possess a concealable firearm.

After a contested jurisdictional hearing held on October 26 and 29, 2001, the court took the matter under submission. On November 5, 2001, the court ordered appellant detained for disposition. On December 14, 2001, the court declared appellant a ward of the court and committed him to the California Youth Authority (CYA). Appellant timely appeals and contends (1) insufficient evidence supports the finding that he aided and abetted in an assault with a deadly weapon; (2) insufficient evidence supports the finding that he committed vehicular burglary; and (3) that the court abused its discretion in committing him to the CYA. We reject these contentions and affirm.

FACTS

On August 5, 2001, Grady Grant was patrolling the spiral parking garage at Inyo and Van Ness in Fresno as an unarmed security guard. Grant saw two, possibly three, minors, later identified as appellant and his brother J. S., sitting in an older model blue Cadillac. Appellant was in the passenger seat and his brother in the driver's seat. Grant asked them what they were doing, and saw that a truck parked near the passenger side of their vehicle had a broken window. Grant moved to the rear of the Cadillac to write down the license number when appellant's brother jumped out of the vehicle and pointed

[1] Further statutory references are to the Penal Code unless otherwise noted.

a gun at Grant. Grant ran to the rear of the car and appellant's brother shot at him. As he continued to run away appellant's brother shot him in the arm.

Appellant's brother got back in the car and the car sped away. Grant received medical attention and was released. The day after the shooting, the police took Grant to an apartment building where he identified appellant's brother's car as that involved in the shooting. Appellant and his brother were present at the apartment. The police retrieved the car keys and searched the apartment. The police found a revolver in the crisper drawer of the refrigerator. In the living room of the apartment there were speaker boxes and a car stereo faceplate. The police also found bolt cutters, a dent puller, a flathead screwdriver, two car stereo units, ammunition, and a clarinet and microphone marked "Fresno Unified School District."

Appellant waived his rights at the police station and stated that he had been practicing his driving in the parking garage and he, his brother and another person decided to steal some stereos. He and the other person tried to break the truck window with a screwdriver. The other person broke the truck window, and Grant approached them. His brother then shot at Grant and when they got home appellant put the gun in the refrigerator.

When asked by another officer, appellant stated he had broken the window on the truck but that he was not trying to take anything, he was just vandalizing.

DISCUSSION

SUFFICIENT EVIDENCE SUPPORTS THE COURT'S FINDING THAT APPELLANT AIDED AND ABETTED IN THE ASSAULT.

The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. The principles of appellate review in criminal trials apply in considering the sufficiency of the evidence admitted in a juvenile proceeding. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809; *In re Michael B.* (1983) 149 Cal.App.3d 1073, 1089.) When the sufficiency of the evidence is challenged, we must

examine the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence from which the trier of fact could find the defendant guilty beyond a reasonable doubt. Substantial evidence must support each essential element of an offense. A judgment of conviction will not be set aside for insufficiency of the evidence unless it is clearly shown there is no basis on which the evidence can support the trier of fact's conclusion. (*People v. Johnson* (1980) 26 Cal.3d 557, 576-577.)

An aider and abettor is guilty not only of the offense he intended to facilitate or encourage, but also of any other crime that was a "natural and probable consequence" of the crime aided and abetted. The natural and probable consequences doctrine is an established rule of American jurisprudence and is based on the conclusion that aiders and abettors should be responsible for the harm they have forseeably put in motion. (*People v. Prettyman* (1996) 14 Cal.4th 248, 260.)

Under the doctrine, "[f]or a criminal act to be a 'reasonably foreseeable' or a 'natural and probable' consequence of another criminal design it is not necessary that the collateral act be specifically planned or agreed upon, nor even that it be substantially certain to result from the commission of the planned act. For example, murder is generally found to be a reasonably foreseeable result of a plan to commit robbery and/or burglary despite its contingent and less than certain potential." (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 530.) The doctrine, as applied here, required the court to objectively determine whether the assault was a natural and probable consequence of the vehicular burglary. "This does not mean that the issue is to be considered in the abstract as a question of law. [Citation.] Rather, the issue is a factual question to be resolved by the [finder of fact] in light of all of the circumstances surrounding the incident. [Citations.]" (*People v. Nguyen, supra*, 21 Cal.App.4th at p. 531.) Thus, the issue was whether a reasonable person in appellant's position would have or should have known that the

charged offense was a reasonably foreseeable consequence of the target crime aided and abetted. (*Ibid.*)

Here, the court had ample evidence before it to support a determination that the assault was a natural and probable consequence of the vehicle burglary. "Whether there is a nexus of foreseeability between the predicate and the perpetrated offense depends not on crime definitions but on the specific *facts* of each offense." (*People v. Solis* (1993) 20 Cal.App.4th 264, 273-274, disapproved on other grounds in *People v. Prettyman*, *supra*, 14 Cal.4th 248.) The facts in this case make it clear that a reasonable person in appellant's position should have known that an assault could result from the repeated criminal conduct he chose to engage in.

Appellant maintains that there was "no evidence whatsoever that appellant was aware, prior to the shooting, that his brother had a weapon with him." However, appellant should have been aware that violence against a person could result from the repeated criminal activity he chose to participate in. Moreover, there was ammunition in their residence in plain sight. Also present in the residence were burglar's tools and numerous stolen items. Appellant admitted that he and his brother had committed vehicle burglaries together in the past. There is no question violence can be a natural and probable consequence of vehicle burglary. That the violence here was effectuated by a gun does not alter appellant's culpability for that violence. Further, the ammunition left in plain sight in the residence constituted sufficient circumstantial evidence that appellant knew his brother had a gun and made violence with a gun a foreseeable result of the repeated criminal conduct. Sufficient evidence supports the court's finding.

THERE WAS SUFFICIENT EVIDENCE OF VEHICLE BURGLARY

Appellant next contends there is insufficient evidence to support his vehicle burglary conviction because there is no evidence he entered the truck. We disagree.

Vehicular burglary is entry into "any vehicle as defined by the Vehicle Code, when the doors are locked with intent to commit grand or petit larceny or any felony." (§ 459.) Case law makes clear that "an entry within the meaning of section 459 includes just about any entry into an *interior section of a locked vehicle* with the requisite intent, including an entry through a door, window, or trunk. [Citation.]" (*In re Young K.* (1996) 49 Cal.App.4th 861, 863.) Appellant does not dispute that the record amply supports the conclusion that one of the three minors broke the truck window with a screwdriver. Rather, he contends that there was no evidence that the screwdriver "penetrated the boundary" of the truck. He contends that it is "entirely conceivable" the screwdriver did not necessarily penetrate into the passenger compartment when it was used to break the window.[2]

In *People v. Valencia* (2002) 28 Cal.4th 1 (*Valencia*) the California Supreme Court recently reaffirmed that any kind of entry will suffice for purposes of the burglary statute. In *Valencia* the court concluded an entry occurred where the intruder merely penetrated an outside screen and did not enter the window to the residence behind the screen. The court nevertheless concluded an entry had occurred because the intruder had violated the building's outer boundary. (*Id.* at p. 138.) The window to the truck itself constitutes an outer boundary to the truck, and there is no dispute the window space was "entered" when the screwdriver broke it, regardless of how the screwdriver was used to break the window. Accordingly, we need not engage in "mental gymnastics" to conclude the truck was "entered" for purposes of the burglary statute. (See *In re Young K.*, *supra,* 49 Cal.App.4th at p. 864) Sufficient evidence supports the burglary conviction.

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[2] Case law makes clear, and appellant does not dispute, that the burglary instrument itself can effect an "entry" whether the burglar enters the vehicle or not. (See *People v. Davis* (1998) 18 Cal.4th 712, 717 and cases cited therein.)

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ORDERING APPELANT COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY

There is no merit to appellant's final contention that the court abused its discretion by ordering CYA commitment. A CYA commitment is reversed only for "abuse of discretion." (*In re Asean D*. (1993) 14 Cal.App.4th 467, 473.) An appellate court will indulge all reasonable inferences to support the decision of the juvenile court. (*Ibid; In re Lorenza M*. (1989) 212 Cal.App.3d 49, 53.)

Under Welfare and Institutions Code section 202 as amended in 1984, the objectives of the juvenile court law expressly include "protection and safety of the public" as well as rehabilitation of the minor, and the statute recognizes punishment as a rehabilitative tool. Appellant contends the juvenile court abused its discretion because "appellant had not been afforded any opportunity to reap the benefits and guidance provided in a local placement." The trial court is not required to provide less restrictive alternatives where they are not appropriate. "[C]ircumstances in a particular case may well suggest the desirability of a [CYA] commitment despite the availability of such alternative dispositions as placement in a [local facility]." (*In re John H*. (1978) 21 Cal.3d 18, 27.) Commitment to CYA is proper if less restrictive dispositions would be ineffective or inappropriate, and there is substantial evidence of probable benefit from CYA. (*In re Lorenza M*., *supra*, 212 Cal.App.3d at p. 58.) Circumstances indicating that a less restrictive placement would be ineffective or inappropriate may include the person's attitude (*In re Michael D*. (1987) 188 Cal.App.3d 1392 p. 1397), the nature, duration and context of the delinquent conduct (Welf. & Inst. Code, § 725.5; *In re Tyrone O*. (1989) 209 Cal.App.3d 145, 152-153), the need to hold the minor accountable for his or her actions (Welf. & Inst. Code, § 202, subd. (b)), and the community's interest in protection from crime (Welf. & Inst. Code, § 202, subd. (a); *In re Lorenza M*., *supra*, 212 Cal. App.3d at pp. 57-58.)

Here, the court concluded that placement at CYA was in the best interests of appellant. The probation officer expressed great concern regarding appellant's propensity for violence and his commission of the current offenses less than one month after being placed on probation and being released from Juvenile Hall. Appellant does not address the evidence that shows he is a threat to the community given the violent nature of the crime and his repeated criminal activity. Nor does he address the evidence supporting the conclusion that CYA would be in appellant's best interests given its intensive counseling available, educational and vocational facilities, security and because of the unavailability of supervision at home. Here, the record amply supports the conclusion less restrictive alternatives were inappropriate and appellant could benefit from CYA placement. The court did not abuse its discretion.

DISPOSITION

The judgment is affirmed.